



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2004

Ms. Therese Sternenberg
Officer for Public Information
Texas Guaranteed Student Loan Corporation
P.O. Box 83100
Round Rock, Texas 78683-3100

OR2004-3475

Dear Ms. Sternenberg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200418.

The Texas Guaranteed Student Loan Corporation (the "corporation") received a request for information relating to the corporation's contract with its current building security provider. Specifically, the requestor seeks the following information:

1. current contracting company name,
2. existing contract length,
3. total hours on original bid,
4. original bid amount,
5. security officer minimum pay rate for existing bid/contract (if any), and
6. actual hours billed and amount (to date).

You state that the corporation does not possess information responsive to items three and four of the request. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 generally does not except information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the corporation currently has an open invitation for bids for on-site security services and that the requestor's employer is one of the bidders expected to respond. You also state that "[r]elease of information relating to [the corporation's] current contract and costs for these services will result in detriment to [the corporation's] ability to obtain truly competitive pricing in the bidding process" and "will adversely affect [the corporation's] ability to realize any cost-savings resulting from the competitive bidding process." Upon review of the corporation's arguments and the submitted information, we conclude that you have demonstrated that public release of the information at issue would cause specific harm to the corporation's interests in a particular competitive bidding situation. Therefore, the corporation may withhold the submitted information from disclosure under section 552.104 of the Government Code until such time as the contract is awarded.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

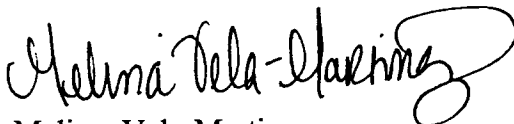
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 200418

Enc. Submitted documents

c: Mr. Miguel Maldonado
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(w/o enclosures)